

DAVID PRIDE H-61218  
CALIPATRIA STATE PRISON  
B2-211-LOW  
P.O. BOX 5005  
CALIPATRIA, CA. 92233  
(IN PRO SE)

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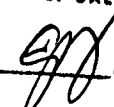
APR 20 2010

FILED

2010 APR 23 AM 8:25

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

BY  DEPUTY

DAVID CODELL PRIDE, JR.,  
(PLAINTIFF)

V.

M. CORREA, et al.,  
(DEFENDANTS)

D.C. NO. 07-CV-1382 BEN (JMA)

*Def motion for*  
MOTION TO DISMISS SUMMARY JUDGMENT:

( UNDER RULE 56 (f) (1) )

DATE: 4.19.10

TIME: 10:30 AM

COURTROOM: 3

Judge: Hon Roger T. Benitez

Plaintiff hereby moves this court to deny/dismiss defendants motion for summary judgment under "Rule 56 (f) Fed. R. Civ. P.. Attempting to gather evidence to support plaintiffs opposition to "defendants motion for summary judgment;" plaintiff contacted (R.N. S. Garcia) by mail with no results, plaintiff then saw "S. Garcia" during a medical-visit with (Dr. Straga) in the (Central Health Dept) at Calipatria/prison, and "Def. Garcia" was questioned by plaintiff in regards to the (602 Inmate-appeal) attached to plaintiff's "original-complaint." Plaintiff expressed his desire to interview Garcia because, Garcia could support his version of events in regards to "medical appointments, Inmate-appeal;" and was questioned about what she exactly told (T. Ochoa) about the "double-mattress" policy at Calipatria/prison; she indicated that she did remember the incident and informing him that the mattress was for "medical purposes,"

1 but she needed to review the Inmate-appeal, and that she needed to get  
2 the okay from her supervisor. Garcia wrote plaintiffs " CDC No. " on  
3 her hand and name, and stated that she would get back to plaintiff,  
4 but, she never did.

5 Plaintiff, while going over the defendants declarations and motion  
6 for summary judgment and the attached exhibits, mainly "exhibit-E/pg.  
7 40," attached to defendants "memorandum of points and authority, "section  
8 (h)" of that exhibit has been altered/blanked out ! This appeals section  
9 indicates the need for Def./S. Garcia, that she could help plaintiff  
10 in certain areas. This document also appears altered from the original,  
11 attached to "Correa's declaration - exhibit-D pg. 6," and in attorney  
12 for defendant's, Sheehy's - declaration pg. 2 line-6, it states that,  
13 "the Inmate appeal is a true copy," however this is false.

14 This document was altered to exclude:

- 15 1.) Respondents have lied in their response during inmate appeals  
16 process.
  - 17 2.) Medical-record reflects need for a double mattress or egg crate.
  - 18 3.) one had been given in (2005).
  - 19 4.) Two Doctor's at that time had recommended it.
  - 20 5.) Each time I went to the doctor, I spoke to them about my medical  
21 appeal, (defendant's point to the appeals second level, stating  
22 that plaintiff did not speak to his doctors about the chrono's since  
23 they were denied), and R.N.-Garcia can vouch for this as she's called  
24 the appeals coordinator for me during my last visit.
  - 25 6.) PCP was suppose to check my records.
- 26  
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1 This section of the inmate-appeals form that was altered contains  
2 vital facts that contest's defendants uncontested facts and points relied  
3 upon by them. A true and accurate original appeals form has been filed  
4 with this court attached to plaintiffs complaint exhibit-B, and a true  
5 and correct copy is attached to this motion as exhibit-A. R.N. S. Garcia  
6 has been now shown to be an unwilling participant as to giving a  
7 statement, and that she must check with her supervisor. The section  
8 of the Inmate-appeal that defendants rely on, see Correa's declaration  
9 pg. 4 paragraph 12; Levin's declaration pg. 5 paragraph 13; defendants  
10 points and authority 6-7, and defendants statement of undisputed facts  
11 pg's 10-11 "54/55." Plaintiff at every opportunity tried to get his  
12 ordered medical treatment and the Inmate-appeal, "medical-records of  
13 several doctor's order's prove that, yet treatment was still denied  
14 and medical-records support that medical-treatment as well as plaintiff's  
15 declaration in support, and defendants alteration of the "602-Inmate  
16 appeal's," and then attempting to capitalize off of wrongfully excluded  
17 facts in a motion for summary judgment, tends to show evidence that  
18 the defendants attempted to defraud this court and may have something  
19 to do with S. Garcia's unwillingness to interview with plaintiff, denying  
20 plaintiff an opportunity to gather opposing evidence in support of his  
21 opposition to defendants motion for summary judgment consistent with  
22 the standards set out in Rule 56 (d)(2).

1 For these reasons, under Rule 56 (f) "when affidavits are  
2 unavailable, if a party opposing the motion shows by affidavit that,  
3 for specified reasons, it cannot present facts essential to justify  
4 its opposition, the court may (1) deny the motion. Plaintiff feels that  
5 (2) of this rule would be ineffective as the evidence suggest that the  
6 issues dealing with S. Garcia was deliberate, and an continuance to  
7 obtain affidavits, depositions or other discovery would not be true  
8 or accurate based upon actions by defendants to defraude this court  
9 with an altered document sworn by declarations to be true, for these  
10 reasons and any other rule that may apply the defendants actions, their  
11 motion for summary judgment should be denied.  
12 See plaintiff's "declaration in support:"

13  
14 Dated: 4.16.10

15 /s/ D. Pride  
16 DAVID C. PRIDE JR  
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EXHIBIT

A

EXHIBIT A

1 Plaintiff's Declaration in Support of Plaintiff's motion-to-dismiss  
2 defendants motion for summary judgment.  
3

4 Plaintiff (David Codell Pride Jr.) Declares Under Penalty of Perjury  
5 that the statements in plaintiffs motion to dismiss defendants-motion  
6 for summary judgment are true and accurate to the best of plaintiff's  
7 memory of stated facts.  
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15 Date: 4.16.10

16 ISI: D. Pride  
17 DAVID C. PRIDE JR  
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CAL B 06 0220

First Level ☐ Granted ☒ P. Granted ☐ Denied ☐ OtherE. REVIEWER'S ACTION (Complete within 15 working days): Date assigned: 2-7-06 Due Date: 3-13-06

Interviewed by:

**PLEASE SEE ATTACHED MEMO RESPONSE.**Staff Signature: Stacia M. S. Garcia, RN Title: STAFF RN Date Completed: 3-17-06Division Head Approved: [Signature] 3/7/06 Returned: MAR 14 2006Signature: [Signature] M. Levin, MD Title: CNO/HCM Date to Inmate: MAR 14 2006

If dissatisfied, explain reasons for requesting a Second-Level Review, and submit to Institution or Parole Region Appeals Coordinator within 15 days of receipt of response.

It has been well understood that all inmates must ask for money damages in a lawsuit to exhaust that portion of any future suit. Also, there really is no "partial granting" of this appeal where as I am still without the requested chrono and egg crate/knee brace, although my doctor recommended it, and I am still in pain and losing sleep due to this neglect.

Signature: David Prude Date Submitted: 3-16-06 <sup>Page 2</sup>Second Level ☐ Granted ☒ P. Granted ☐ Denied ☐ OtherG. REVIEWER'S ACTION (Complete within 10 working days): Date assigned: 4-3-06 Due Date: 4-19-06☒ See Attached LetterSignature: Marcia Correa M. Correa, RN, SNW-IT Date Completed: 31 MAY 2006Warden/Superintendent Signature: [Signature] M. Levin, MD, CNO/HCM Date Returned to: JUN 01 2006

H. If dissatisfied, add date or reasons for requesting a Director's Level Review, and submit by mail to the third level within 15 days of receipt of response.

Respondents have lied in their response! My medical record reflects my need for a double mattress or egg crate; it also reflects one was given in 2005; as well as two different doctors recommended it; each time I went to see the doctor I spoke to him about this appeal and RN Garcia can vouch for this as she's called the appeals coordinator for me during my last visit. My PCP was suppose to check my records as well.

Signature: David Prude Date Submitted: 6.12.06

For the Director's Review, submit all documents to: Director of Corrections  
P.O. Box 942883  
Sacramento, CA 94283-0001  
Attn: Chief, Inmate Appeals

DIRECTOR'S ACTION: ☐ Granted ☐ P. Granted ☒ Denied ☐ Other☒ See Attached Letter

AUG 16 2006

Date:

CDC 602 (12/87)